STATE OF IOWA

DEPARTMENT OF COMMERCE

UTILITIES BOARD

IN RE: FIBERCOMM, L.C., FOREST CITY TELECOM, INC., HEART OF IOWA COMMUNICATIONS, INC., INDEPENDENT NETWORKS, L.C., AND LOST NATION-ELWOOD TELEPHONE COMPANY, Complainants, vs. AT&T COMMUNICATIONS OF THE MIDWEST, INC., Respondent.	DOCKET NOS. FCU-00-3 WRU-02-2-290

ORDER DENYING REHEARING, LIFTING STAY, AND WAIVING 199 IAC 22.14(2)"d"(1)

(Issued January 25, 2002)

PROCEDURAL HISTORY ON REHEARING

On October 25, 2001, the Utilities Board (Board) issued its "Final Decision and Order" in this docket. On November 14, 2001, applications for rehearing were filed by AT&T Communications of the Midwest, Inc. (AT&T), and FiberComm, L.C., Forest City Telecom, Inc., Heart of Iowa Communications, Inc., Independent Networks, L.C., and Lost Nation-Elwood Telephone Company (collectively, Complainants). Also on November 14, 2001, AT&T filed a motion for a stay of the Board's final decision and

order pending the Board's action on the applications for rehearing and while the Board's action in this docket is the subject of judicial review proceedings in district court (if the Board fails to grant the relief requested by AT&T in its application for rehearing).

On November 28, 2001, Goldfield Access Network, L.C. (Goldfield), filed an answer in support of the Complainants' application for rehearing and an answer to AT&T's application for rehearing. On the same day, Complainants filed a response to AT&T's application for rehearing and a resistance to AT&T's motion for stay pending any future judicial review proceedings. Also on November 28, 2001, AT&T filed a statement of opposition to Complainants' application for rehearing.

On November 29, 2001, Laurens Municipal Broadband Communications Utility and Coon Rapids Municipal Communications Utility (the Municipal CLECs) filed their response, joining in the Complainants' application for rehearing and adopting the Complainants' position regarding AT&T's application for rehearing.

Iowa Code § 476.12 (2001) provides that the Board must either grant or refuse an application for rehearing within 30 days after the filing of the application. On December 14, 2001, the Board granted both of the applications for rehearing, solely for purposes of further consideration. The Board stated that no additional evidence would be received and no additional briefs or argument would be required. The Board also granted AT&T's unopposed motion for stay while the Board considered the applications for rehearing, but the Board denied, without prejudice to re-filing at a

later date, the motion for a stay of the Board's order while any subsequent judicial review proceedings are pending.

SUMMARY OF FINAL DECISION AND ORDER

This case involves AT&T's refusal to serve customers of certain Competitive Local Exchange Carriers, or CLECs (the Complainants), and to pay access charges to those same CLECs because the CLEC access charges are higher than the Incumbent Local Exchange Carrier (ILEC) access charges in the same exchanges. AT&T argued that it had not ordered access services from the CLECs[1] and therefore could not be required to pay for the services.

In the "Final Decision and Order," the Board found that Iowa Code § 476.101(9) prohibits any telecommunications carrier, such as AT&T, from taking any action that disadvantages a customer based on the customer's choice of telecommunications carrier. (Final Decision and Order, p. 9.) The Board further found that AT&T's actions in refusing to serve customers of the Complainants violated § 476.101(9) by disadvantaging the customers based on their choice of local exchange carrier. (Id.) The Board also found that AT&T's actions violated § 477.11, which requires that long distance companies connect to local exchange companies upon request. (Id.)

Thus, the Board concluded that AT&T is required by statute to connect with, and pay for services rendered by, the CLECs. AT&T argued this would put it at the mercy of an unconstrained monopoly in each exchange, but the Board found that if

AT&T, or any other interexchange carrier (IXC), believes a particular CLEC's access charges are unreasonable, the IXC can file a written complaint with the Board pursuant to § 476.11 asking that the Board determine the just and reasonable terms and procedures for exchange of the toll traffic. (Final Decision and Order, p. 12.) The Board also found it has jurisdiction over the CLEC access charges pursuant to § 476.101(1), which provides that if the Board finds a CLEC has market power in a local exchange market, the Board may apply appropriate provisions of chapter 476 to the CLEC. (Final Decision and Order, p. 15.) The Board found the evidence in this record establishes that the CLECs possess market power in the provision of access services (Id.); the Board further recognized that the FCC recently made the same finding with respect to interstate access services. (Final Decision and Order, p 16.) Having found jurisdiction, the Board reviewed the CLECs' access charges and found the CLECs are charging intrastate access rates that are significantly higher than the rates they charge for interstate access, when the costs are the same. The Board also found that the CLEC access rates are significantly higher than the access rates charged by Qwest and Iowa Telecom in the same exchanges. The Board recognized that the CLECs' costs per customer may be higher than the ILECs', but the Board also found that the CLECs typically charge the same or lower retail rates than the ILEC charges in the same exchange, an indication that the CLECs are using their market power in the bottleneck access market to improve their position in the

[1] References in this order to "the CLECs" include the Complainants and the Municipal CLECs.

competitive retail market. The Board concluded that the CLEC access charges are not just, reasonable, and nondiscriminatory. (Final Decision and Order, p. 21.)

Again, the Board noted that the FCC recently reached a similar conclusion and addressed it by requiring that CLECs that compete with certain ILECs must remove a particular element, the Carrier Common Line (CCL) charge, from their access rates. The Board applied similar reasoning to conclude that the CCL is no longer a supportable element of the CLECs' intrastate access charges and directed the CLECs to file new access charges that do not include the CCL. (Final Decision and Order, p. 22.)

However, the Board recognized that the resulting rates may not be sufficient to allow the CLECs to recover all their costs of providing access and allowed the CLECs the option of proposing higher access charges, if they can support them. At the same time, the Board recognized a matching right of the interexchange carriers to challenge any CLEC's access charges if the IXC believes the charges are too high. (Id.)

With respect to the access services AT&T used in the past, but for which it did not pay, the Board found that AT&T constructively ordered the access services and is obligated to pay for them at the CLECs' then-effective tariffed rates. The CLECs were directed to submit new bills to AT&T, current through the date of the order, and AT&T was directed to pay the bills in a timely manner. (Final Decision and Order, p. 30.)

Finally, the Board declined the Complainants' request to assess civil penalties against AT&T.

AT&T'S APPLICATION FOR REHEARING

AT&T asks the Board to either (a) dismiss the complaint and order new CLEC access tariffs with rates no higher than the ILEC access rates in each exchange or (b) vacate the "Final Decision And Order," hold additional hearings, and set new CLEC access charges for both the future and the prior period. In support of its request for relief, AT&T raises four issues with the Board's order: (1) the Board's interpretation of § 476.101(9); (2) the Board's interpretation of § 477.11; (3) the proper amount of the presumed reduction of CLEC access charges; and (4) the Board's finding that AT&T constructively ordered access services from the CLECs in the past.

1. Interpretation of § 476.101(9)

AT&T argues the Board misconstrued § 476.101(9). AT&T asserts that its actions are not the cause of any disadvantage suffered by CLEC end users. (AT&T Application, pp. 3-6.) AT&T argues any such disadvantage was the result of each CLEC's decision to charge excessive access charges. AT&T disputes whether any disadvantage has occurred at all, noting it has not blocked any calls. AT&T also argues that a customer's potential loss of AT&T as a choice for interexchange services is not a "disadvantage" because there are many other IXCs to choose from.

The Complainants respond that AT&T is merely repeating its earlier arguments, which the Board has already considered and rejected. (Complainant response, pp. 2-3.)

The Board agrees with the Complainants; AT&T is merely repeating its earlier arguments with respect to this issue. There can be little argument concerning the Board finding that AT&T's actions are disadvantaging customers who have chosen to receive service from another telecommunications carrier. AT&T argues that a CLEC customer can choose another IXC, so there is no disadvantage, but that is not the end of the analysis; it considers only the question of originating access charges, not terminating, and ignores the ability (or inability) of customers to call toll-free numbers served by AT&T.

If the Board were to rule that AT&T can refuse to pay these CLEC access charges, the inevitable result would be call blocking by the CLEC or by AT&T, with the result that the CLECs' customers would be unable to receive calls from other callers who use AT&T's services and unable to place calls to persons who use AT&T's toll-free numbers. In each of these situations, the CLEC's customers are disadvantaged as a result of the customer's choice of the CLEC for local exchange service, and the disadvantage is the result of AT&T's actions because AT&T chose to engage in self-help, unilaterally refusing to pay access charges, rather than file a proper challenge to the CLEC access charges.

The Board will deny AT&T's application for rehearing regarding the proper interpretation of § 476.101(9).

2. Interpretation of § 477.11

The second issue raised by AT&T concerns the Board's interpretation of § 477.11. (AT&T Application, p. 6.) AT&T repeats its earlier arguments that this statute only requires that it connect with the historical, rate-regulated incumbent LECs, not with every ILEC and CLEC that requests a connection, citing Northwestern Bell Tel. Co. v. Hawkeye State Tel. Co., 165 N.W.2d 771 (Iowa 1969) and Northwestern Bell Tel. Co. v. Farmers Mutual Tel. Co., Iowa Utilities Board Docket No. FCU-90-6 (issued May 10, 1991). AT&T also argues that the Board's decision in the instant docket "errs in artificially dividing the statute into 'antiquated' and purportedly unantiquated parts and then refusing to give effect to the former while applying the latter." (Id.)

The Complainants respond that neither of the cases cited by AT&T supports the proposition for which AT&T has cited them. Instead, each case assumes the requirement to interconnect and addresses conflicts over the point of interconnection and the ownership of the required facilities. (Complainant Response p. 3.)

The Board agrees with the Complainants that the cases cited by AT&T do not support AT&T's position that it is only required to connect with the historical, rate-regulated incumbent LECs; the cited cases do not contain any such language and did not address any such issue.

AT&T's argument that the Board erred in characterizing part of § 477.11 as "antiquated" appears to refer to the following language from the Board's decision:

> AT&T's argument that § 477.11 requires that the LEC have a municipal franchise is based on an antiquated interpretation of Iowa law. The municipal franchise language of § 477.11 dates back to 1933, when the statute was adopted. At that time, each telephone utility derived its authority to operate in a community from a city franchise. That situation was changed in 1992 when § 476.29 was enacted. Section 476.29(1) requires that telephone utilities must have a certificate of public convenience and necessity issued by the Board before furnishing landline local telephone service in Iowa. Section 476.29(6) specifically provides that the Board-issued certificate (and the tariffs filed with the Board) "are the only authority required for the utility to furnish land-line local telephone service," completely displacing the municipal franchise requirement.
>
> Moreover, AT&T's interpretation of the municipal franchise requirement would defeat the very purpose of § 477.11. The statute was enacted in response to a judicial decision permitting an IXC to serve one local telephone company in Allerton while refusing to connect with the other local telephone company in the same town. Section 477.11 was intended to prohibit that discrimination between local exchange companies by requiring the IXC to connect with both LECs. AT&T's interpretation would defeat the purpose of the statute and therefore must be rejected.

(Final Decision And Order, pp. 10-11, footnote omitted.) The Board was responding to AT&T's argument that § 477.11 only requires that long distance carriers connect with "any local exchange within the state desiring same," and § 477.10(1) defines "local exchange" as a local telephone system "operating by virtue of a franchise granted by a city . . . ." Thus, AT&T concludes, it is only required to interconnect with the municipally-franchised ILECs, and not with the CLECs (which typically do not have municipal franchises).

In its "Final Decision and Order," the Board characterized the municipal franchise requirement as "antiquated." The Board's terminology has a sound basis; as of July, 1998, municipalities no longer have the authority to grant telephone franchises, see 1998 Iowa Acts ch. 1148, § 4(a), amending Iowa Code § 364.2(4)"a" by deleting the municipal power to franchise telephone utilities. Thus, the language of § 477.10 defining a local exchange in terms of a "franchise granted by a city" is correctly characterized as "antiquated;" cities no longer have the power to grant such franchises.

The Board will deny AT&T's request for rehearing concerning the proper interpretation of Iowa Code § 477.11.

3. Proper reduction of CLEC access charges

Next, AT&T claims the Board erred when it failed to set the CLECs' access rates at the same level as the ILEC in each exchange. (AT&T Application, pp. 6-10.) AT&T argues the Board's decision is based on speculation that any particular CLEC's per-customer costs may be higher than the competing ILEC's. AT&T also argues that in a competitive market, similar services should have similar prices, so it makes sense to set the CLEC's access charges at the same level as the ILEC's in each exchange. AT&T recognizes that the FCC's Seventh Report and Order established a "rural CLEC exemption" that allows qualifying CLECs to charge somewhat higher access charges (NECA tariffed rates less the CCL), but AT&T argues there is no evidence in this record that any of the Complainants is qualified for that exemption. In the alternative, AT&T argues the Board did not reduce the CLECs' intrastate

access charges by a sufficient amount; instead, they should first have been reduced to match NECA (interstate) levels, then the CCL should have been subtracted.

Complainants respond that the reasonableness of CLEC access rates was never an issue before the Board in this docket, so the Board cannot have committed error by refusing to reduce the CLEC access rates to the level of the competing ILECs. (Complainants' Response, pp. 4-5.) They argue any adjustment of their access charges is based on speculation "since there was no evidence in this record relating to an appropriate level of just and reasonable rates . . . ." (Id.) Complainants further point out that the FCC has recognized that CLECs serving in rural areas face higher per-customer costs and therefore should not have their access charges limited to the comparable ILEC rates in rural areas. (Id.)

The Board will deny AT&T's request for rehearing with respect to this issue. AT&T argues the Board is merely speculating that the CLECs' costs per customer are higher than the competing ILECs' and that these CLECs are truly "rural CLECs," but it is clear that the FCC agrees with the Board that these findings are reasonable and correct. In its Seventh Report and Order, the FCC stated:

> We are persuaded by the CLEC comments indicating that they experience much higher costs, particularly loop costs, when serving a rural area with a diffuse customer base than they do when serving a more concentrated urban or suburban area. The CLECs argue that, lacking the lower-cost urban operations that non-rural ILECs can use to subsidize their rural operations, the CLECs should be permitted to charge more for access service, as do the small rural incumbents that charge the National Exchange Carrier Association (NECA) schedule rates. We note in this regard that a rural exemption will also create parity between the

> rural CLECs competing with the NECA carriers and those competing with the non-rural ILECs.

(Paragraph 66, footnotes omitted.) The FCC defined these rural CLECs as any CLEC competing with a non-rural ILEC where no part of the CLEC's service area falls within any incorporated place of 50,000 or more or an "urbanized area" as defined by the Census Bureau. (Id., paragraph 76.) The Board's public records define each LEC's service territory and reveal that most, if not all, of the CLECs that are parties to this case meet the FCC's definition.

Moreover, if AT&T is of the opinion that any of these CLECs do not have higher costs per customer, AT&T can challenge the CLEC's access charges when the CLEC files its revised access tariff removing the CCL from its charges. The same response applies to AT&T's argument that the Board failed to reduce the CLECs' access charges by a sufficient amount; AT&T will have the opportunity to offer evidence in support of its position when the new CLEC tariffs are filed.

4. Constructive ordering of access services

Finally, AT&T argues it did not constructively order access services from the CLECs, generally repeating the arguments it made in its post-hearing briefs. (AT&T Application, pp. 10-13.) However, AT&T adds an argument that the Board committed error when it ordered AT&T to pay access charges to the CLECs for the period prior to the date of the decision based on the CLECs' existing tariffs, since (a) those tariffs include rates that the Board has now found to be unreasonable and (b) the Board lacks authority to order money judgments. AT&T also claims that a recent oral ruling

by the Advamtel Court should be considered by the Board. In that ruling, a transcript of which is attached to AT&T's application, the Court left final resolution of the issues for trial, but AT&T argues "the Court made very clear" that AT&T was not required to block traffic in order to avoid a constructive order and that factors such as AT&T's billing practices, advertising, and PIC requests, do not constitute evidence of a constructive order. (Application, p. 12.)

Complainants argue the Board did not commit error in concluding that AT&T constructively ordered Complainants' services. (Complainants' response, pp. 5-7.) Complainants argue the transcript of the Advamtel Court's order actually shows that AT&T's position regarding constructive ordering is irrelevant because the Court determined that if AT&T is required to take the service, the question of constructive ordering is irrelevant, and the Board has determined that AT&T must take the service and complete the calls under Iowa law. Complainants also argue AT&T misstates the Court's ruling regarding the other factors, as the Court said only that advertising, by itself, does not seem to be "a strong leg on which to base constructive ordering." (Response, pp. 6-7.)

The Board will deny AT&T's application for rehearing with respect to this issue. To the extent AT&T merely reiterates its earlier arguments, the Board has already considered and rejected them. (Final Decision and Order, pp. 23-30.) As far as the Advamtel transcript is concerned, it appears the transcript of the Advamtel Court's ruling does not support AT&T's position to the extent claimed. The Court explicitly recognizes that "constructive ordering exists," but declines to rule on the question of

whether AT&T constructively ordered access services until after the evidence is received at hearing. (Transcript, pp. 27-28.) That ruling is entirely consistent with the Board's decision in this docket, which finds, based upon the evidence in this record, that AT&T constructively ordered access services from the CLECs.

As to AT&T's argument that the Board committed error by requiring payment for access services for the period prior to the order on the basis of the tariffs the Board has now found to be unreasonable, AT&T's argument ignores the filed rate doctrine, which requires that a filed, tariffed rate is normally applicable and enforceable until it is found to be unlawful. The Board has rejected the CLEC access tariffs on a prospective basis only; if AT&T thought the CLEC access rates were too high in the past, it should have filed a complaint with the Board at that time.

AT&T's argument that the Board lacks authority to order a money judgment also misses the mark. The Board did not order a money judgment. Instead, the Board found that the CLEC access charge tariffs apply to the services that AT&T used and directed that the CLECs should re-bill ATT for the services rendered. This was well within the Board's jurisdiction, pursuant to § 476.11.

COMPLAINANTS' APPLICATION FOR REHEARING

Complainants state they have no objection to the Board's determination that it has jurisdiction to consider access rates "in an appropriate proceeding," but they argue that this was not such a proceeding. (Complainants' Application, p. 2.) Basically, the Complainants argue their access rates and charges were not at issue

in this docket and ask the Board to strike from the "Final Decision and Order" any discussion or determination of the reasonableness of their access charges and rates.

Complainants argue their petition raised only three issues: (1) a request for a Board order permitting CLEC customers to use AT&T's services; (2) a request for a Board order requiring AT&T to interconnect with the CLECs; and (3) a request that the Board order AT&T to pay past-due bills for access services provided. Complainants argue the reasonableness of their access rates was never an issue;

the party. Instead, § 476.95(2) specifically provides that in rendering decisions with respect to regulation of telecommunications companies, the Board "shall" consider the effects of its decisions on competition in telecommunications markets and, to the extent reasonable and lawful, "shall" act to further the development of competition in those markets. The General Assembly's use of the word "shall" in this statute imposes a duty on the Board, see § 4.1(30)"a." In making its decision regarding the Complainants' access charges, the Board had a duty to consider the possibility that the CLECs have been exercising market power with respect to access services in order to subsidize their competitive retail rates, with resulting effects on the development of competition:

> The ability to [charge higher access rates than the ILEC], while underpricing the competition in the competitive market, indicates that the CLECs are using their power in the bottleneck access market to improve their position in the competitive retail service market.

(Final Decision And Order, p. 20.) Section 476.95 *requires* that the Board consider this impact when making its decision, giving the Complainants statutory notice that the competitive effect of the Board's decision would have to be an issue in this case.

Complainants also argue that the Board's actions are flawed because the Board lacks a sufficient evidentiary record to consider their access charges. However, the record indicates the Complainants knew that AT&T considered their access charges to be too high. That was the basis of AT&T's refusal to pay for CLEC access services. Thus, the level of the CLECs' access charges is the underlying cause of this entire complaint proceeding, and Complainants cannot credibly

maintain that they lacked notice that their access charges could be an issue in this docket.

As to the question of evidence, no party has raised any material issue of fact regarding the Board's finding that each local exchange carrier has market power with respect to interexchange access to the LEC's own customers. As noted in the "Final Decision And Order" at page 15, this Board finding is essentially identical to the finding made by the FCC in its Seventh Report and Order, where the FCC discusses the structure of the access market and concludes the IXCs that pay access charges have no practical ability to influence customer choice of LEC, making it impossible for the market to influence access charges.

Moreover, while the Board recognized that the record in this case is not like a typical rate case record (Final Decision And Order at page 18), the Board found sufficient evidence in the record to permit a determination regarding the reasonableness of the CLECs' access charges, including the matching interstate charges for access services and the competing ILECs' access charges for intrastate access services. (Final Decision And Order, pp. 18-20.)

The Complainants' arguments regarding the record miss the point of the Board's decision. The Board did not establish new access charges in this docket; it found that the CLECs' existing access charges are unreasonable and unlawful and established a rebuttable presumption that the CLECs should not be permitted to mirror the Iowa Telecommunications Association access tariff without first subtracting the CCL. (Final Decision And Order, pp. 21-22.) The Board explicitly stated that any

CLEC may propose higher access charges if it believes it can support them, leaving every CLEC with the ability to set higher access charges if they will be just and reasonable in that CLEC's particular circumstances.

With respect to the Complainant arguments that there is no intrastate SLC and that the FCC only eliminated the interstate CCL where the ILEC is using a SLC, the short answer is that the Board never directed the CLECs to use an intrastate SLC. Thus, in the "Final Decision And Order" at page 21 the Board states: "While CLECs may not use a SLC, per se, they have the ability to build a component into their end-user rates that is approximately equal to the ILECs' SLC." Thus, the Board did not assert that there is an intrastate SLC; it merely recognized the ability of the Complainants to set their own retail rates to include an amount similar to a SLC, if they are so inclined and the market will allow it.

Further, the FCC is in the process of removing the interstate CCL from *all* access charges. In its recent "MAG Plan Order,"[2] the FCC finds that the interstate CCL is "an inefficient cost recovery mechanism and implicit subsidy" and should be phased out of the common line rate structure. (MAG Plan Order at paragraphs 40-41, 61-68.) Thus, the Complainants' argument that the FCC is eliminating the CCL charge only where the ILEC uses a SLC is no longer correct.

Finally, Complainants argue that the three-cent CCL is required by the Board's rule, but this argument is undercut by the Complainants' admission that the Board's

rule is not followed by the major ILECs. Complainants admit that both Qwest and Iowa Telecom have CCL charges of less than the three cents specified in the rules. (Complainants' Application, p. 9.) Clearly, the rule is no longer applied to these ILECs, the very carriers against which Complainants are competing.

The Qwest and Iowa Telecom access charges were set in contested cast proceedings specific to those carriers, where the Board set individualized access charges as exceptions to the three-cent default figure in the Board's rule. A similar analysis applies here; the Board is establishing a rebuttable presumption that the CCL is not an appropriate element of the CLECs' access charges in these competitive exchanges. However, in order to clarify the situation, the Board will expressly waive the requirements of 199 IAC 22.14(2)"d"(1) as applied to the CLEC parties to this proceeding. The waiver will be identified as Docket No. WRU-02-2-290.

Board rule 1.3 sets out the standards for waiving a Board rule. Applying those standards, the Board finds, based upon the evidence in this record, which continued application of subparagraph 22.14(2)"d"(1) to the CLECs would pose an undue hardship on IXCs by requiring them to pay excessive access charges to these CLECs without a demonstration that those access charges are reasonable. It would also pose an undue hardship on the ILECs with which these CLECs compete,

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[2] "Second Report And Order And Further Notice Or Proposed Rulemaking, etc.," In the matter of the Multi-Association Group (MAG) Plan, etc., CC Docket Nos. 00-256, 96-46, 98-77, and 98-166, issued November 8, 2001.

because excessive access charges give the CLECs an unreasonable competitive advantage.

Waiving the rule will not prejudice the substantial legal rights of the CLECs because they have no legal right to collect unreasonable access charges and they will continue to have the right to seek any level of access charges they believe to be reasonable. In the past, the Board has effectively applied a rebuttable presumption that the ITA access charges were appropriate for these CLECs; the Board is now reducing the level of presumptively correct access charges by the amount of the CCL. Any CLEC, which believes its circumstances warrant higher access charges remains free to file for whatever level of access charges it believes it can support.

The Board further finds that the provisions of the rule are not specifically mandated by statute or another provision of law and that substantially equal protection of public health, safety, and welfare will be afforded by the ability of any interested person to propose, or challenge, each CLEC's individual access charges, pursuant to § 476.11.

ORDERING CLAUSES

IT IS THEREFORE ORDERED:

1. The applications for rehearing filed by AT&T and the Complainants on November 14, 2001, are denied.

2. The stay granted to AT&T on December 14, 2001, is lifted.

3. Pursuant to 199 IAC 1.3, the Board waives 199 IAC 22.14(2)"d"(1) as applied to the CLEC parties to this proceeding. This waiver, identified as Docket No. WRU-02-2-290, shall continue until further order of the Board.

UTILITIES BOARD

/s/ Diane Munns

/s/ Mark O. Lambert

ATTEST:

/s/ Judi K. Cooper
Executive Secretary

Dated at Des Moines, Iowa, this 25th day of January, 2002.